

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.8075 OF 2006

Smt.Sunanda W/o.Ramakant Desai
& ors. .. Petitioners

Vs.

Shri Ghesubhai Jain & Ors. .. Respondents
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Shri A.A.Kocharekar for the petitioners.

Shri P.S.Dani i/b Arun Jain & Co. for the respondent
No.2.
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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 22nd DECEMBER, 2006

P.C.

1. The learned advocate for the petitioners states that the petitioners crave leave to withdraw the petition with liberty to approach the Trial Court with an application for striking of the portion of the affidavit in question to the extent it contains submissions and not the statements of facts. The learned advocate appearing for the respondents has no objection for the same.

2. Before parting with the matter, it is to be

recorded that the affidavits which are permissible to be filed under Order 18 Rule 4 of the Code of Civil Procedure, 1908 are necessarily to be in consonance with the provisions comprised under Order 19 of the Code of Civil Procedure. Obviously, therefore, the affidavit should contain statement of facts and not the submissions. The Court, while accepting the affidavit in terms of the Order 18 Rule 4 of the Code, has to ensure that the affidavits which are filed under the said provisions of law contain the statements of facts and not the submissions, and if the affidavit is found to contain submissions, the Court should either reject the affidavit in toto and allow the parties to file fresh affidavit or should direct the parties to take necessary steps to do the needful in the matter. At the same time, the Courts have also to ensure that the main object and the purpose behind the provisions comprised under Order 18 Rule 4 of the Code is to avoid delay in disposal of the suits. Any attempt on the part of the litigant to protract the litigation by filing affidavits after affidavits in relation to the same fact should also be discouraged. It is always to be borne in mind that it is not quantity of the evidence but quality of the evidence which is material. This aspect should be borne in mind even while entertaining the affidavits

filed by the parties in terms of the Order 18 Rule 4 of the Code. The Court should be alert in that regard while allowing such affidavits to be produced on record.

3. With the above observations, the petition is allowed to be withdrawn with the said liberty, and accordingly stands disposed of.

(R.M.S.KHANDEPARKAR, J)